

COTTONWOOD HEIGHTS

RESOLUTION NO. 2011-45

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH UTAH DEPARTMENT OF TRANSPORTATION FOR A "SAFE ROUTES TO SCHOOLS" SIDEWALK PROJECT (SOUTH SIDE OF 7200 SOUTH FROM 1384-1656 EAST)

WHEREAS, UTAH CODE ANN. §11-13-101, *et seq.* (the "*Interlocal Cooperation Act*") provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the city of Cottonwood Heights (the "*City*") and Utah Department of Public Transportation ("*UDOT*") are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, as authorized by the Interlocal Cooperation Act, in the interest of public safety the City and UDOT desire to enter into a certain "Cooperative Agreement-Safe Routes to Schools" (the "*Agreement*") concerning a sidewalk construction/improvement project on the South Side of 7200 South from 1384 to 1656 East in the City; and

WHEREAS, the city council (the "*Council*") of the City met in regular session on 29 November 2011 to consider, among other things, approving the City's entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, the city attorney of the City has approved the form of the Agreement as required by *Utah Code Ann.* §11-13-202.5(3); and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City's residents to approve the City's entry into the Agreement as proposed;

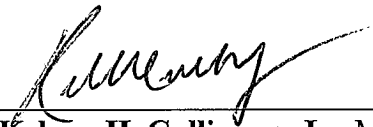
NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with UDOT is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.


This Resolution, assigned no. 2011-45, shall take effect immediately upon passage.

PASSED AND APPROVED this 29th day of November 2011.

COTTONWOOD HEIGHTS CITY COUNCIL



By 
Kelvyn H. Cullimore, Jr., Mayor


Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 29th day of November 2011.

RECORDED this 30 day of November 2011.

570148.1

Application Number: 10-25
Local Authority: Cottonwood Heights City
Project Location/Description: 7200 S; South side from 1384 E to 1656 E

COOPERATIVE AGREEMENT SAFE ROUTES TO SCHOOLS

Program
(FEDERAL PARTICIPATION)

THIS Cooperative Agreement, made and entered into this ____ day of _____, 20__, by and between the Utah Department of Transportation hereinafter referred to as "UDOT", and Cottonwood Heights City, State of Utah, acting through its Mayor, Kelvyn Cullimore hereinafter referred to as "LOCAL AUTHORITY", witnesseth that:

WHEREAS, in the interest of public safety, it is the desire of the parties hereto plan, design, construct and maintain an infrastructure-related project that will improve safety for students to walk and bicycle to school at the locations as described in the project scope, up to the amount granted; and

WHEREAS, infrastructure projects using public funds shall be within public right of way, either public property owned by a public entity and/or private land that have public access easements; and

WHEREAS, public funds for the planning, designing and construction of infrastructure and non-infrastructure projects have been made available by the Federal Government; and

WHEREAS, the LOCAL AUTHORITY agrees to comply with the applicable UDOT and Federal Highway Administration (FHWA) Federal-aid Program Procedures and Standards for the project; and

WHEREAS, by law, UDOT may not expend State funds on any local government project; and

Whereas, Federal funds may not be expended for projects that do not specifically serve the stated purposes of the Safe Route to School program and shall not be used for reoccurring cost except as specifically provided by law, shall not be used primarily for the convenience of drivers rather than to improve child safety and/or walking and bicycling access, and may not be used for educational programs that are primarily focused on bus safety or improvements to bus stops,

THIS COOPERATIVE AGREEMENT is made to set out the terms and conditions where under said work shall be performed.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. **Description of Work Involved:** The work covered by this agreement shall consist of the following:

a. UDOT shall:

- (1) Provide an Oversight Manager or Consultant Oversight Manager for the project.
- (2) Provide a Consultant for preconstruction and construction engineering management services.
- (3) Provide concept meeting, scoping meeting, right of way acquisition approval, P.S.& E. review, right-of-way certification, and final review.
- (4) Package the project for advertising and award the construction contract.
- (5) Construct the project to UDOT standards.

2. **Duties Of the LOCAL AUTHORITY:**

- (k) **Guarantee Access:** The LOCAL AUTHORITY shall guarantee access to and make all provisions for UDOT, Consultant and Contractor to enter upon all lands, both public and private which in the judgment of the parties hereto are necessary to carry out such work as may be required.

(l) **Prompt Consideration:** The LOCAL AUTHORITY shall give prompt consideration to all reports, plans, proposals and other documents presented by UDOT or the Consultant.

3. **Liability:** Each Party agrees to indemnify and save harmless the other for damages, claims, suits and actions arising out of its own actions or omissions or the acts or omissions of its officers, agents, or employees in connection with this Agreement. It is expressly agreed between the Parties that the obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, Section and that this provision is not a waiver of the Governmental Immunity Act by the Parties.

The indemnification in paragraph 3 shall survive the expiration or termination of this agreement

19. **Construction Change Orders:** UDOT shall approve all construction change orders. The LOCAL AUTHORITY shall not direct or approve any construction change orders.
20. **Project Underruns:** Any funds remaining at the completion of the project resulting in an underrun will revert back to the Safe Route to School Program for redistribution by UDOT.
21. **Accessible to Persons with Disabilities:** Infrastructure projects constructed with Federal funds shall be accessible to persons with disabilities, per the Americans with Disabilities Act Accessibility Guidelines (ADAAG) at 28 CFR Part 36, Appendix A, as enforced by the U.S. Department of Justice and FHWA, and as required under section 504 of the Rehabilitation Act.
7. **Real Property Acquisition:** For real property acquisition and displacement activities, the LOCAL AUTHORITY shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in accordance with 49 CFR Part 24.
8. **Maintenance:** The LOCAL AUTHORITY shall properly maintain as constructed or improved in accordance with State and Federal requirements.
9. **Audit Requirements for Right of Way Reimbursement**

Reimbursements to the LOCAL AUTHORITY for right of way claims are classified as a pass-through of Federal funds from UDOT to the LOCAL AUTHORITY. A LOCAL AUTHORITY receiving Federal funds is subject to the audit requirements of the Office of Management and Budget Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. A single audit conducted in accordance with OMB Circular No. A-133 is required if a LOCAL AUTHORITY receives \$500,000 or more in a year in Federal funds from all sources. Refer to <http://www.whitehouse.gov/omb/circulars/a133/a133.html#b> for additional information. The LOCAL AUTHORITY shall provide copies of required audits to the Utah Department of Transportation, Internal Audit, 4501 South 2700 West, Box 148230, Salt Lake City, Utah 84114-8230 and the Federal Highway Administration Utah Division, 2520 W. 4700 S., Suite 9A, Salt Lake City, UT 84118.

10. **Right of Way Disposal/Lease Proceeds**

For real property disposals the LOCAL AUTHORITY shall comply with 23 CFR 710.409 and 710.403. The LOCAL AUTHORITY should have property management records, which identify inventories of real property considered excess to project needs. If a LOCAL AUTHORITY determines that real property initially acquired as part of the project is declared excess and disposed of the LOCAL AUTHORITY must comply with 23 CFR 710.409 and 710.403. This requires that the Federal share of net income from the sale or lease of real property acquired with Federal assistance be used for Title 23 eligible projects. Refer to <http://www.gpoaccess.gov/cfr/retrieve.html> for additional information. The LOCAL AUTHORITY shall deposit the net proceeds from the sale or lease with UDOT to be applied towards a Title 23 eligible project.

11. Pass-through entity responsibilities: A pass-through entity shall perform the following for the Federal awards it makes (from Federal Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations, <http://www.whitehouse.gov/omb/circulars/a133/a133.html>);

- a. Identify Federal awards made by informing each sub-recipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.
- b. Advise sub-recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.
- c. Monitor the activities of sub-recipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations and the provisions of contracts or grant agreements and that performance goals are achieved.
- d. Ensure that sub-recipients expending \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards during the sub-recipient's fiscal year have met the audit requirements for this part for that fiscal year.
- e. Issue a management decision on audit findings within six months after receipt of the sub-recipients audit report and ensure that the sub-recipient takes appropriate and timely corrective action.
- f. Consider whether sub-recipient audits necessitate adjustment of the pass-through entity's own records.
- g. Require each sub-recipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.
- h. The following types of reimbursements to LOCAL AUTHORITY are classified as pass-through of Federal funds: reimbursement to a LOCAL AUTHORITY for land acquisitions and incidental ROW costs; reimbursements for approved material acquisitions by a LOCAL AUTHORITY and the LOCAL AUTHORITY uses Federal funds to carry out a program.

12. Inter-local Cooperation Act Requirements:

- a. This agreement shall be approved by each party pursuant to Section 11-13-202.5 of the Inter-local Co-operation Act, Utah Code Title 11, Chapter 13, as amended (the "Act").
- g. This agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to Section 11-13-202.5 of the Act;
- c. A duly executed original counterpart of this agreement shall be filed with keeper of records of each party, pursuant to Section 11-13-209 of the Act;
- d. Except as otherwise specifically provided herein, each party shall be responsible for its own costs of any action done pursuant to this agreement, and for any financing of such costs; and
- j. No separate legal entity is created by the terms of this agreement. To the extent that this agreement requires administration other than as set for herein, it shall be administered by

the school boards of the LOCAL AUTHORITY and UDOT Traffic & Safety, acting as a joint board. No real or personal property shall be acquired jointly by the parties as a result of this agreement. To the extent that a party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this agreement, such party shall do so in the same manner that it deals with other property of such party.

13. Cost Principles and Grant Administration Requirements

The LOCAL AUTHORITY shall comply with the Code of Federal Regulations, Title 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. LOCAL AUTHORITY shall also comply with the cost principles and procedures in the Office of Management and Budget, Circular A-87, Cost Principles for State and LOCAL AUTHORITY. Refer to <http://www.whitehouse.gov/omb/circulars/a087/a087-all.html> for additional information.

14. Termination: This agreement may be terminated as follows:

- a. By mutual agreement of the parties, in writing
- b. By either UDOT or the LOCAL AUTHORITY for failure of any of the parties to fulfill their obligations as set forth in the provisions of this agreement. Reasonable allowances will be made for circumstances beyond the control of the parties. Written notice of intent to terminate is required and shall specify the reasons for termination.
- c. By UDOT for the convenience of the State upon written notice to the LOCAL AUTHORITY.
- d. Upon satisfactory completion of the provisions of this agreement.
- e. By UDOT, in the event that construction of the project for which this design engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which this agreement is executed.

15. Duration: The term of this agreement shall begin on the date it has been approved by all parties pursuant to Section 9, and shall terminate as provided in Section 14, which termination date shall be not more than 50 years after the beginning of the term.

Application Number: 10-25

Local Authority: Cottonwood Heights City

Project Location/Description: 7200 S; South side from 1384 E to 1656 E

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day, month, and year first above written.

AUTHORIZED LOCAL AUTHORITY OFFICIAL:

By: _____
Title: _____

Date: _____

Printed Name: _____

UTAH DEPARTMENT OF TRANSPORTATION TRAFIC & SAFETY:

By: _____
Title: Safety Programs Engineer

Date: _____

This form agreement has been reviewed and approved by the designated representative of the Attorney General